

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY FAILS,

Plaintiff,

v.

IRS, et al.,

Defendants.

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Case No. 3:22-cv-0996-X-BK

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. [Doc. No. 13]. Plaintiff Anthony Fails, an inmate in the Florida Department of Correction (“FDOC”), filed suit *in forma pauperis* against the IRS and FDOC. The Magistrate Judge concluded that the “three-strike” provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), bars Fails from proceeding in this action *in forma pauperis*. Section 1915(g) provides that a prisoner may not bring a civil action *in forma pauperis* if that prisoner has, on three or more prior occasions while incarcerated, “brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”¹ The Magistrate Judge found that Fails

¹ 28 U.S.C. § 1915(g).

has accrued three strikes under § 1915(g) and that “his complaint is wholly devoid of any allegation of imminent danger of serious physical injury.”²

Fails filed objections, arguing that § 1915(g) is inapplicable to the present action because it applies only to claims for monetary, not injunctive, relief, and he is only seeking injunctive relief.³ Fails’s assertion that § 1915(g) does not bar claims for injunctive relief is baseless. Section 1915(g) applies to all “civil action[s]” and the statute makes no distinction between claims for monetary relief and claims for injunctive relief.⁴ Fails does not respond to the Magistrate Judge’s conclusion that he accrued three strikes and failed to allege imminent danger of serious physical injury as required by § 1915(g). Nor does it provide any support for the assertion that § 1915(g) does not apply to this action. Accordingly, the Court **OVERRULES** Fails’s objection.


The District Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendations to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge. [Doc. No. 13]. Accordingly, the Court **DENIES** Fails’ motion for leave to proceed *in forma pauperis* and **DISMISSES WITH PREJUDICE** this action.

² Doc. No. 13 at 2.

³ Doc. No. 17 at 2.

⁴ 28 U.S.C. § 1915(g).

IT IS SO ORDERED, this 15th day of February, 2023.



BRANTLEY STARR
UNITED STATES DISTRICT JUDGE